



# The Tooele Chemical Agent Disposal Facility: State and Federal Scrutiny Supports Operations

The Army is an international leader in chemical weapons disposal with more than 80 years of experience and operating the two largest disposal facilities in the world. Drawing on these decades of experience and applying lessons learned from its first fully-integrated disposal facility, the Johnston Atoll Chemical Agent Disposal System, the Army began operating its second chemical weapons disposal facility, the Tooele Chemical Agent Disposal Facility (TOCDF), in August 1996.

Beginning in 1996, several advocacy groups challenged TOCDF operations in U.S. District Court and before the Utah Solid and Hazardous Waste Control Board, an administrative body of the Utah Department of Environmental Quality. Because the outcomes

of these judicial and administrative reviews are critical to continued TOCDF operations and have implications for chemical agent disposal activities across the country, an overview of the legal proceedings on TOCDF is presented below.

The U.S. Army Chemical Materials Agency (Provisional) is committed to the safe disposal of chemical weapons and welcomes public, judicial and administrative scrutiny of its program. Such scrutiny is the best assurance that the Army's chemical weapons disposal program is protective of the public, workers and the environment. For additional information, contact the CMA Public Outreach and Information Office at (800) 488-0648.

Legal Summary	Date of Decision	Ruling
Advocacy groups petition U.S. District Court to grant a preliminary injunction to halt TOCDF start up operations, asserting that operations pose an imminent and substantial endangerment to human health and the environment.	<b>August 13, 1996</b>	<i>Army and EG&amp;G prevail.</i> U.S. District Court denies request for preliminary injunction due to lack of evidence supporting plaintiff's claims, clearing the way for the Army to begin disposal operations at TOCDF.
Advocacy groups file motion with Utah Solid and Hazardous Waste Control Board to stay start up of TOCDF operations, claiming imminent and substantial endangerment to human health and the environment.	<b>August 22, 1996</b>	<i>Army and EG&amp;G prevail.</i> Utah Solid and Hazardous Waste Control Board denies stay of operations due to lack of evidence supporting plaintiff's claims, allowing TOCDF to begin processing.
Advocacy groups appeal August 13, 1996, U.S. District Court ruling, requesting emergency stay of TOCDF operations pending ruling.	<b>December 6, 1996</b>	<i>Army and EG&amp;G prevail.</i> United States Court of Appeals, 10th Circuit, denies stay on procedural grounds allowing TOCDF to begin processing.

For more information, contact the Public Outreach and Information Office of the Chemical Materials Agency (Provisional) 1(800) 488-0648 or [www.cma.army.mil](http://www.cma.army.mil)

or visit the Tooele Chemical Stockpile Outreach Office 54 South Main Street Tooele, Utah 84074  
Phone: (435) 882-3773  
Toll Free: 1(800) 471-1617  
Fax: (435) 882-7904



## The Tooele Chemical Agent Disposal Facility: State and Federal Scrutiny Supports Operations (continued)

Legal Summary	Date of Decision	Ruling
Advocacy groups file second motion with Utah Solid and Hazardous Waste Control Board to stay TOCDF operations, claiming “new” evidence of irreparable harm.	<b>December 12, 1996</b>	<i>Army and EG&amp;G prevail.</i> Utah Solid and Hazardous Waste Board denies stay of operations due to lack of evidence supporting plaintiff’s claims, allowing TOCDF to continue processing chemical agent.
Advocacy groups file second motion with U.S. District Court requesting a preliminary injunction claiming “new” evidence of irreparable harm.	<b>March 24, 1997</b>	<i>Army and EG&amp;G prevail.</i> U.S. District Court denies second motion for preliminary injunction, allowing TOCDF to continue operations.
Advocacy groups request revocation of TOCDF’s RCRA permit before the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste Board. Two requests for agency action were combined in this request.	<b>April 17, 1997</b>	<i>Army and EG&amp;G prevail.</i> Request for agency action was denied in an oral decision by the Division of Solid and Hazardous Waste Board. The written decision was issued on July 22, 1998.
Advocacy groups file appeal of August 13, 1996, District Court decision to deny first motion for a preliminary injunction to halt TOCDF operations on claims of substantial endangerment to human health and the environment.	<b>April 22, 1997</b>	<i>Army and EG&amp;G prevail.</i> United States Court of Appeals, 10th Circuit, upholds District Court decision, allowing TOCDF to continue operations.
Advocacy groups appeal the decision by the Division of Solid and Hazardous Waste to the Utah Court of Appeals.	<b>August 20, 1998</b>	<i>Army and EG&amp;G prevail.</i> The Utah Court of Appeals upholds the decision by the Utah Division of Solid and Hazardous Waste to allow the TOCDF permit to remain in effect.
The Army and EG&G file motions for summary judgement to dismiss various counts regarding claims of advocacy groups that TOCDF adversely affects human health and area resident’s property rights. Oral arguments were heard in Federal District Court on January 4, 1999.	<b>January 21, 1999</b>	<i>Army and EG&amp;G prevail.</i> U.S. District Court Judge Tena Campbell rejects a nuisance claim because plaintiffs fail to demonstrate that they have been injured by TOCDF’s action. The Court says no evidence is shown that emissions affected land or health in any identifiable way.



## The Tooele Chemical Agent Disposal Facility: State and Federal Scrutiny Supports Operations (continued)

Legal Summary	Date of Decision	Ruling
Advocacy groups file a lawsuit with the U.S. District Court in May 1996, challenging the operation of TOCDF. A trial was held, sitting without a jury, in June 1999. According to the advocacy groups, past operations of TOCDF by the Army and EG&G violated various environmental statutes and its continued operation presents an imminent and substantial endangerment to human health and the environment.	<b>April 14, 2000</b>	<i>Army and EG&amp;G prevails.</i> U.S. District Court rules in favor of the Army and EG&G on all claims against them, allowing TOCDF to continue operations. The evidence at the trial established that no agent-related injuries have been sustained and no agent has been released into the environment outside TOCDF.
On October 29, 1998, the Chemical Weapons Working Group (CWWG) filed a new Request for Agency Action (RFAA) challenging the State's recent approval of trial burn results and authorization to process at full rate. Oral arguments heard on April 8, 1999 before the Division of Solid and Hazardous Waste Board on motions by the Army and EG&G to dismiss.	<b>April 8, 1999</b>	On April 8, 1999, the Board took under advisement a decision to rule on motions to dismiss.
Advocacy groups file a Request for Agency Action (RFAA) before the Division of Solid and Hazardous Waste Board on Jan. 21, 2000 to revoke the RCRA permit modification allowing the incineration of heels greater than 5% and requiring a new trial burn before being reissued.  The Army & EG&G moved in May 2000 to dismiss the third request for agency action based on collateral estoppels due to the favorable federal court decision on the same issues. The Army and EG&G made a similar motion regarding the Families Against Incineration Risk (FAIR) request for agency action which was joined with CWWG's request. The motion to dismiss was argued on June 14, 2001.	<b>July 13, 2001</b>  <b>February 14, 2001</b>  <b>Pending</b>	In a July 13, 2001 Order, the Board dismissed the Fourth RFAA and directed CWWG to file a new action if they intended to pursue allegations regarding permit modifications. Regarding the Third RFAA, the Board dismissed this as well and directed CWWG to file a more detailed request. Both were refiled on July 30, 2001.  The 4th RFAA was dismissed on February 14, 2002 as moot.  No hearing date has been set for the 3rd RFAA.



## The Tooele Chemical Agent Disposal Facility: State and Federal Scrutiny Supports Operations (continued)

Legal Summary	Date of Decision	Ruling
Advocacy groups earlier filed an appeal with the U. S. 10th District Court of Appeals (Denver) of a lawsuit ruling made in April 2000 by the U.S District Court (Salt Lake City) upholding the operation of TOCDF. The original lawsuit was filed in May 1996 before TOCDF started destroying GB (Sarin) nerve agent.	March 18, 2003	<i>Army and EG&amp;G prevail.</i> The U. S. 10th District Court of Appeals (Denver) rules in favor of the Army and EG&G. A three-judge panel dismisses the appeal filed by incineration opponents and upholds a ruling issued by the U. S. District Court in April 2000. (See April 14, 2000 ruling). The 10th Circuit court rules that “imminent and substantial endangerment must be threatened presently, not at some undetermined future point” as plaintiffs argued.
On August 5, 2002, CWWG filed a 5th RFAA challenging Utah’s approval of the Army’s Trial Burn Plan for the beginning of the VX agent destruction campaign.	Pending	The Army filed its answer on September 10, 2002. No hearing date has been set for the 5th RFAA.